

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
CLERK

11/2/2023 12:11 pm

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

-----X  
:  
UNITED STATES OF AMERICA, :  
:  
v. : 22-CR-347 (JMA) (SIL)  
:  
PATRICK POLIDORE, : September 29, 2023  
:  
Defendant. : Central Islip, NY  
:  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR GUILTY PLEA  
BEFORE THE HONORABLE JAMES M. WICKS  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: BREON PEACE, ESQ.  
U.S. ATTORNEY  
BY: ANTHONY BAGNUOLA, ESQ.  
ASSISTANT U.S. ATTORNEY  
271 Cadman Plaza East  
Brooklyn, New York 11201

For the Defendant: TRACEY GAFFEY, ESQ.  
Federal Defenders of New York  
770 Federal Plaza  
Central Islip, NY 11722

Court Transcriber: ARIA SERVICES, INC.  
c/o Elizabeth Barron  
274 Hovey Road  
Milo, ME 04463  
Aria@leinen.net

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service

1           THE CLERK:   Calling case 22-CR-347, United  
2 States of America v. Patrick Polidore.

3           Counsel, please state your appearances for  
4 the record.

5           MR. BAGNUOLA:   Good afternoon, your Honor.  
6 Anthony Bagnuola for the government.

7           THE COURT:   Good afternoon, Mr. Bagnuola.  
8 You can remain seated.

9           MS. GAFFEY:   Good afternoon, your Honor.  
10 Tracey Gaffey, Federal Defenders, for Patrick Polidore,  
11 who is also present in court this afternoon.

12           THE COURT:   Good afternoon, Ms. Gaffey.  
13 Good afternoon, Mr. Polidore.

14           THE DEFENDANT:   Good afternoon.

15           THE COURT:   Ms. Gaffey, I'm advised that Mr.  
16 Polidore does wish to plead guilty to Count 1 of the  
17 indictment that's been filed against him. Is that  
18 correct?

19           MS. GAFFEY:   It is but he is pleading guilty  
20 to Count 4.

21           THE COURT:   Hold on. Count 4, I'm sorry,  
22 Count 4. One count, which is Count 4.

23           MS. GAFFEY:   Yes, your Honor.

24           THE COURT:   Okay, great, thank you for the  
25 clarification.

1           Mr. Polidore, your counsel advises me that  
2 you intend to withdraw your plea of not guilty and  
3 instead plead guilty to Count 4 of the indictment  
4 that's been filed against you. This is a serious  
5 decision so I want to -- I have to make sure that you  
6 understand all of your rights and the consequences of  
7 your plea, so I'm going to have to ask you questions,  
8 all right? These questions are going to require that  
9 your answers be made under oath, so my courtroom deputy  
10 Doreen will now swear you in if you wouldn't mind  
11 standing and raising your right hand.

12           (Defendant is sworn.)

13           THE COURT: Okay, you may be seated, thank  
14 you. So now you've been sworn to tell the truth, you  
15 have to tell the truth. If you were to deliberately  
16 lie in response to any of my questions, you could face  
17 further consequences and criminal charges for perjury  
18 or making false statements. That means if you do make  
19 a false statement to the questions I pose, the  
20 government could use those statements and prosecute you  
21 for perjury or making a false statement.

22           Do you understand that?

23           THE DEFENDANT: Yes.

24           THE COURT: Okay. And if there's anything  
25 that I say in this proceeding today that you don't

1 understand or if you need me to repeat something, or if  
2 you need a break to speak with Ms. Gaffey at any time,  
3 just ask, all right?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. It's important that you  
6 understand everything that goes on in this proceeding  
7 today. Understood?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. First off, you do have  
10 the right to have your guilty plea heard by the  
11 district judge who is going to sentence you, and that  
12 in this case is Judge Azrack. Instead of having her  
13 handle the plea today, you can waive that right and  
14 have me as a magistrate judge handle it. A transcript  
15 of what transpires today will be made and given to  
16 Judge Azrack, and then she will review that as well.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you had the opportunity to  
20 speak with Ms. Gaffey about waiving the right to have  
21 Judge Azrack hear the plea of guilty and instead having  
22 me do it?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: Do you wish to give up that  
25 right to have Judge Azrack hear your plea and instead

1 proceed before me?

2 THE DEFENDANT: Yes.

3 THE COURT: And you make this decision  
4 voluntarily and of your own free will?

5 THE DEFENDANT: Yes.

6 THE COURT: Has anyone made any promises to  
7 you or threatened you in any way to induce you to have  
8 the plea heard by me?

9 THE DEFENDANT: No.

10 THE COURT: I have a proposed order of  
11 referral and consent, and it looks like you've signed  
12 both the order of referral and consent, two forms.

13 Is this your signature?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. And you signed them  
16 today, Mr. Polidore?

17 THE DEFENDANT: Yes.

18 THE COURT: Is that after you spoke with Ms.  
19 Gaffey about waiving and the consequences of waiving  
20 the right to have Judge Azrack hear the plea?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay, I'm going to so order  
23 those then.

24 Before I accept your plea, there are  
25 questions that I have to ask you to assure myself that

1 the plea is valid. Again, if you don't understand any  
2 of the questions, please say so. It's important that  
3 you understand each of the questions. The first one is  
4 easy.

5 What's your full name?

6 THE DEFENDANT: Patrick Polidore, Junior.

7 THE COURT: And how old are you, Mr.

8 Polidore?

9 THE DEFENDANT: 32.

10 THE COURT: And how far did you go in  
11 school?

12 THE DEFENDANT: High school.

13 THE COURT: Okay. Did you finish high  
14 school?

15 THE DEFENDANT: No.

16 THE COURT: How far in high school?

17 THE DEFENDANT: Eleventh grade.

18 THE COURT: All right. Have you had any  
19 problems or difficulties communicating with Ms. Gaffey?

20 THE DEFENDANT: No.

21 THE COURT: Have you been recently under the  
22 care of a doctor or psychiatrist for any reason?

23 THE DEFENDANT: Due to my probation  
24 stipulations, I had to go to therapy.

25 THE COURT: Okay, that's all right. Are you

1 taking any medications?

2 THE DEFENDANT: No.

3 THE COURT: Any alcohol to drink in the last  
4 24 hours?

5 THE DEFENDANT: No.

6 THE COURT: Any drugs in the last 24 hours?

7 THE DEFENDANT: No.

8 THE COURT: Including marijuana?

9 THE DEFENDANT: No.

10 THE COURT: Is your mind clear today?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand what we're  
13 doing here today?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. You do, Mr.

16 Polidore, as a defendant in a criminal case have the  
17 right to be represented by counsel at every stage of  
18 your criminal case, including this one, from the time  
19 you're arrested right through appeal. And if you can't  
20 afford one at any time along that process, the Court  
21 will appoint one to represent you.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: You also have the right to hire  
25 your own attorney if you so choose.

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Ms. Gaffey has been your  
4 attorney, correct?

5 THE DEFENDANT: Yes.

6 THE COURT: Have you had sufficient time to  
7 speak with Ms. Gaffey about today's proceedings and  
8 what we're doing today?

9 THE DEFENDANT: Yes.

10 THE COURT: In particular, have you had  
11 enough time to speak with her about your decision to  
12 enter a guilty plea in this case?

13 THE DEFENDANT: Yes.

14 THE COURT: If you need to speak with her as  
15 we proceed today, just ask me and we can take a break,  
16 all right?

17 THE DEFENDANT: Okay.

18 THE COURT: Otherwise, we're going to  
19 continue to proceed. You're satisfied with the  
20 assistance that she's given you so far?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. And you've reviewed  
23 the indictment, I take it, in this case?

24 THE DEFENDANT: Yes.

25 THE COURT: And you've discussed the charges



1 in the indictment with Ms. Gaffey?

2 THE DEFENDANT: Yes, I have. Sorry, yes, I  
3 have.

4 THE COURT: That's all right. If you want  
5 some water, it's right in front of you, all right?  
6 That's for you, all right?

7 THE DEFENDANT: Okay.

8 THE COURT: Ms. Gaffey, any difficult or  
9 problems communicating with Mr. Polidore?

10 MS. GAFFEY: No, your Honor.

11 THE COURT: In your view, is he capable of  
12 understanding the nature of the charge?

13 MS. GAFFEY: Yes, he is.

14 THE COURT: Have you discussed the charges  
15 in the indictment and what it means to plead guilty?

16 MS. GAFFEY: I have.

17 THE COURT: Does he understand the rights  
18 he's going to be giving up or waiving by pleading  
19 guilty?

20 MS. GAFFEY: He does.

21 THE COURT: Any concern about his competence  
22 to plead guilty here today?

23 MS. GAFFEY: None.

24 THE COURT: Have you advised him about the  
25 maximum sentence and penalties that could be imposed?

1 MS. GAFFEY: I have.

2 THE COURT: And how the sentencing  
3 guidelines and 3553 factors will work?

4 MS. GAFFEY: I have.

5 THE COURT: I see him shaking his head yes  
6 as you say this so you must have.

7 As I understand it, you're seeking to plead  
8 guilty to Count 4 today, which is charging a violation  
9 of 18 USC 922(a)(6), making false statements to acquire  
10 firearms.

11 Do you understand what you've been charged  
12 with?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. Crimes are made up of  
15 what we call elements, and elements are really like  
16 separate ingredients that the government has to prove  
17 at trial, and they have to prove these beyond a  
18 reasonable doubt, each of the elements, in order for  
19 someone to be convicted of that crime. And if the  
20 government is unable to prove any of these elements or  
21 ingredients beyond a reasonable doubt, then a defendant  
22 like yourself cannot be convicted of the crime charged.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Bagnuola, I know that you've

1 recited the elements I think in the standard plea form,  
2 is that correct?

3 MR. BAGNUOLA: Yes, your Honor.

4 THE COURT: All right. Would you mind  
5 reciting them for the record, though, what the elements  
6 are here so we can just go over those?

7 MR. BAGNUOLA: Certainly. That the  
8 defendant purchased or attempted to purchase a firearm  
9 from a licensed dealer. That he made a statement to  
10 that dealer in connection with the purchase. In this  
11 case, it's that he was the intended recipient of the  
12 firearm being purchased. That the statement was false  
13 and Mr. Polidore made the statement knowing it was  
14 false. That the statement was material to the purchase  
15 of the firearm. Here, that's because the true intended  
16 beneficiary was a prohibited person. And finally, that  
17 the false statement was intended to deceive the dealer.

18 THE COURT: All right, thank you very much.

19 Ms. Gaffey, any disagreement as to the  
20 elements as recited by Mr. Bagnuola?

21 MS. GAFFEY: No, your Honor.

22 THE COURT: Okay. Mr. Polidore, you've  
23 heard the elements that were just recited of the crime  
24 to which or the charge to which you intend to plead  
25 guilty?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. Did you have time to  
3 discuss these elements with Ms. Gaffey today?

4 THE DEFENDANT: Yes, I have.

5 THE COURT: All right. Any questions for me  
6 about the elements or the charge?

7 THE DEFENDANT: No.

8 THE COURT: Okay. So by pleading guilty to  
9 the charge, this charge in particular, you'll be giving  
10 up some very valuable rights, okay? What I want to now  
11 do is go over these rights that you have and the rights  
12 that you're going to be giving up by pleading guilty.  
13 First, you have the right to plead not guilty.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Which you have already and you  
17 can persist in that. What that really means is, even  
18 if you are guilty, you have a choice. It's up to you  
19 to decide what to do, not Ms. Gaffey, not Mr. Bagnuola,  
20 not me, not Judge Azrack.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: You can withdraw -- you may  
24 withdraw your previously entered plea of not guilty and  
25 plead guilty, as apparently you wish to do today, or

1 you can simply go to trial by persisting in your plea  
2 of not guilty.

3 Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: The choice is yours. If you  
6 plead not guilty to the charges, you have the right  
7 under the Constitution and the laws of the United  
8 States to a speedy and fair and public trial before a  
9 jury with the assistance of counsel, in this case Ms.  
10 Gaffey, on the charges that are contained in the  
11 indictment.

12 Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: If the government fails to meet  
15 the burden of proof that is beyond a reasonable doubt,  
16 the jury would have to find you not guilty. And any  
17 verdict by the jury, whether guilty or not guilty,  
18 would have to be unanimous, meaning that all 12 jurors  
19 have to agree.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. And in the course of  
23 the trial, witnesses for the government would have to  
24 come into court and testify in your presence. Ms.  
25 Gaffey would have the right to cross-examine these

1 witnesses and object to evidence offered by the  
2 government, and could offer evidence on your own  
3 behalf.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: And she would also have the  
7 right to compel witnesses to come to testify who may  
8 not want to come to testify. She could ask the Court  
9 to issue subpoenas to compel them here.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: And at trial, you would even  
13 have the right, not the obligation but the right to  
14 testify on your own behalf if you wanted to. On the  
15 other hand, you wouldn't be forced to testify if you  
16 didn't want to. Under the Constitution and laws, no  
17 one can be forced to testify and be a witness against  
18 him or herself. So if you had a trial and you chose  
19 not to testify, Judge Azrack in fact would instruct the  
20 jury that they couldn't hold that against you.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: If instead of going to trial,  
24 you plead guilty to the crime charged and Judge Azrack  
25 accepts your guilty plea on my recommendation, you'll

1 be giving up these constitutional rights that I just  
2 described to a trial and all the other rights I just  
3 described.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: There would be no trial in the  
7 case. The Court would simply enter a guilty --  
8 judgment of guilt based upon your plea.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: And if you do plead guilty, I'm  
12 going to have to ask you some questions about what you  
13 did in order to satisfy myself and ultimately Judge  
14 Azrack that in fact, you're guilty of the crimes that  
15 you're being charged with. So you're going to have to  
16 answer questions and acknowledge your guilt, all right?

17 THE DEFENDANT: Yes.

18 THE COURT: What does this mean? It means  
19 you're giving up your Fifth Amendment right not to  
20 testify against yourself.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Also, if you enter a guilty plea  
24 today and you admit to the criminal conduct alleged in  
25 the charge and Judge Azrack accepts your plea on my

1 recommendation, you cannot appeal to a higher court on  
2 whether in fact you committed the crime or not. That  
3 is over by your plea.

4 Do you understand that?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Are you willing to give up your  
7 right to a trial and all the other rights I've just  
8 described?

9 THE DEFENDANT: Yes, I am.

10 THE COURT: Okay. Any questions for me so  
11 far?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. I understand there  
14 is a written cooperation agreement in this case, which  
15 we will mark as Court Exhibit 1.

16 Mr. Polidore, have you read and had an  
17 opportunity to review with Ms. Gaffey the cooperation  
18 agreement?

19 THE DEFENDANT: Yes.

20 THE COURT: And is it clear to you?

21 THE DEFENDANT: Yes, it is.

22 THE COURT: Do you understand all of the  
23 terms?

24 THE DEFENDANT: Yes.

25 THE COURT: I would just like you -- if you



1 have a copy of it in front of you, just turn to the  
2 last page, which is page 7. I just want to confirm  
3 that your signature appears on page 7.

4 THE DEFENDANT: Yes.

5 THE COURT: Is that what you signed?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. We have the original up  
8 here but you have a copy in front of you?

9 THE DEFENDANT: Yes, that's right.

10 THE COURT: You signed that in front of Ms.  
11 Gaffey here today?

12 THE DEFENDANT: Yes.

13 THE COURT: And after you reviewed it with  
14 her?

15 THE DEFENDANT: Yes.

16 THE COURT: And after you discussed it with  
17 her?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Does this agreement, in  
20 your view, contain all of the promises made between the  
21 government and you in exchange for your plea of guilty?

22 THE DEFENDANT: Yes.

23 THE COURT: Has anyone made any other  
24 promises to you in addition to what's in this  
25 cooperation agreement?

1 THE DEFENDANT: No.

2 THE COURT: Okay. Has anyone made any  
3 promises to you about what your sentence would be?

4 THE DEFENDANT: No.

5 THE COURT: Okay. Ms. Gaffey, you've  
6 discussed this agreement with Mr. Polidore?

7 MS. GAFFEY: I have, your Honor.

8 THE COURT: Do you believe he understands  
9 fully its terms and conditions?

10 MS. GAFFEY: Yes, I do.

11 THE COURT: And that's your signature as  
12 well?

13 MS. GAFFEY: Yes, it is.

14 THE COURT: All right. And he signed the  
15 agreement in your presence?

16 MS. GAFFEY: Yes, he did.

17 THE COURT: In your view, does the agreement  
18 contain all of the promises made between the government  
19 and your client in exchange for his plea of guilty  
20 today?

21 MS. GAFFEY: Yes, it does.

22 THE COURT: Mr. Bagnuola, that is your  
23 signature on the agreement?

24 MR. BAGNUOLA: Yes, your Honor, as well as  
25 that of a supervising Assistant U.S. Attorney.

1           THE COURT:   Excellent.   And in your view, it  
2 contains all of the promises made between the  
3 government and Mr. Polidore in exchange for his plea of  
4 guilty?

5           MR. BAGNUOLA:   It does.

6           THE COURT:   All right.   Mr. Polidore, I must  
7 make sure that you understand the consequences now of  
8 pleading guilty to Count 4 of the indictment.   As I  
9 mentioned, Count 4, which charges a violation of Title  
10 18 USC 922(a)(6) for making false statements to acquire  
11 firearms, carries the following potential penalties:

12           A minimum term of imprisonment of zero  
13 years, a maximum of ten years, maximum supervised  
14 release three years to follow any term of imprisonment.  
15 If a condition is release is violated, you could be  
16 sentenced to up to two years without credit for  
17 prerelease imprisonment or time previously served on  
18 post-release supervision.   The maximum fine could be up  
19 to \$250,000, and a mandatory \$100 special assessment.  
20 In addition, under Title 18 USC 922(g), anyone who is  
21 convicted of a felony is prohibited from possessing a  
22 firearm, and any such possession constitutes a federal  
23 crime punishable by a term of imprisonment of up to ten  
24 years.

25           Do you understand the consequences of

1 pleading guilty which I've just described?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. And if you're a non-  
4 citizen of the U.S. as well, a plea of guilty could  
5 lead to deportation.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. As to sentencing  
9 now, if you plead guilty, Judge Azrack will be the one  
10 sentencing you, okay? And I want to briefly review how  
11 she's going to go about doing that.

12 Have you had the opportunity and chance to  
13 speak with Ms. Gaffey about that, the process of  
14 sentencing?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: All right. Ms. Gaffey, have you  
17 had sufficient time to discuss it with Mr. Polidore?

18 MS. GAFFEY: I have, your Honor.

19 THE COURT: And how she will consider the  
20 sentencing guidelines and the 3553 factors?

21 MS. GAFFEY: Yes.

22 THE COURT: And in your view, do you believe  
23 that he understands the process that Judge Azrack will  
24 undergo to arrive at the sentence?

25 MS. GAFFEY: Yes, I do.

1           THE COURT: All right. Mr. Polidore, the  
2 crime to which you're pleading guilty carries potential  
3 consequences that I just described. To determine what  
4 your actual sentence will be, Judge Azrack has to  
5 consider something called sentencing guidelines, and  
6 they're just that. They're a guide to help the Court  
7 determine whether there should be a prison term and if  
8 so, for how long, and also, the amount of fines and  
9 whether supervised release should be imposed and if so,  
10 for how long. The guidelines are not mandatory but  
11 Judge Azrack is required to at least consider them.

12           Do you understand that?

13           THE DEFENDANT: Yes.

14           THE COURT: Mr. Bagnuola, I think in the  
15 cooperation agreement, you described what the estimate  
16 of ranges are at this time?

17           MR. BAGNUOLA: That is not contained in the  
18 cooperation agreement, Judge.

19           THE COURT: All right. Do we have that in  
20 the standard plea form?

21           MR. BAGNUOLA: I don't believe that was one  
22 of the questions called for in the plea form but I can  
23 recite them on the record.

24           THE COURT: If you would.

25           MR. BAGNUOLA: Sure.

1           THE COURT: This is just an estimate, Mr.  
2 Polidore, of the range of sentence under the guidelines  
3 as we sit here today.

4           MR. BAGNUOLA: Assuming Mr. Polidore  
5 receives a 3-point reduction for acceptance of  
6 responsibility by virtue of his plea here today, the  
7 government estimates a total offense level of 25.  
8 Because Mr. Polidore has no known criminal history, we  
9 expect he'll be in criminal history category 1, and  
10 that would produce an advisory guidelines range of 57  
11 to 71 months.

12           THE COURT: Okay. Thank you very much.

13           Ms. Gaffey, at this time, do you have any  
14 disagreement with the government's estimate that you  
15 would like to put on the record?

16           MS. GAFFEY: No, your Honor.

17           THE COURT: All right. Mr. Polidore, I want  
18 to emphasize that what the government just described is  
19 just an estimate as we know today, based on what the  
20 government knows today. So even if you're sentenced to  
21 something different from what Mr. Bagnuola just  
22 estimated the sentencing guideline range to be, you  
23 will not be allowed to withdraw this plea of guilty.

24           Do you understand that?

25           THE DEFENDANT: Yes.

1           THE COURT: All right. The government's  
2 estimate is also not binding on Judge Azrack, either.  
3 Rather, she's going to do her own sentencing guideline  
4 calculation, and that's the calculation that's going to  
5 be used at sentencing. The guidelines themselves,  
6 though, sometimes allow the judge under certain  
7 circumstances to depart upward or downward from the  
8 advisory guideline range.

9           In addition, the law requires her to  
10 consider another set of factors. These include the  
11 seriousness of the crime that was committed, your  
12 history and background, the need for punishment and the  
13 need to deter you and others from committing similar  
14 crimes. These are what we call 3553 factors. After  
15 taking all of these things into consideration, Judge  
16 Azrack may sentence you to something higher or lower  
17 than what's called for in the advisory sentencing  
18 guidelines.

19           Do you understand that?

20           THE DEFENDANT: Yes.

21           THE COURT: The important thing you need to  
22 understand today is that until you're sentenced, no one  
23 can tell you exactly what your sentence is going to be,  
24 not your lawyer, not Mr. Bagnuola, or me.

25           Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: To help Judge Azrack calculate  
3 the applicable sentence in your case and evaluate the  
4 3553 factors, she's going to get a presentence report  
5 from the Probation Department, okay? The report is  
6 going to be all about you and your history and your  
7 background, the charges, and any other relevant  
8 matters. The Probation Department does its own  
9 guideline calculation that they provide in this  
10 presentence report, and they will recommend a sentence  
11 that they believe is appropriate. So you will get a  
12 copy of this along with Ms. Gaffey and the government,  
13 and everybody will have an opportunity to review and  
14 see the report and challenge it in any way.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: And then Judge Azrack will hold  
18 something called a sentencing hearing. At that  
19 hearing, Ms. Gaffey and Mr. Bagnuola can present  
20 arguments, witnesses, evidence on any sentencing issue.  
21 You could bring family, you can bring friends to  
22 support you in court. You'll also have a chance to  
23 tell Judge Azrack directly what you want to say before  
24 she imposes sentence.

25 Do you understand that?



1           THE DEFENDANT:   Yes.

2           THE COURT:   All right.   So she's going to  
3 use the presentence report that she gets and all of the  
4 information that she receives at this sentencing  
5 hearing so that she can calculate and consider what she  
6 thinks should be the appropriate and applicable  
7 guideline range after weighing these 3553 factors, and  
8 then she will determine your sentence.

9           Do you understand that?

10          THE DEFENDANT:   Yes.

11          THE COURT:   Any questions from me about  
12 sentencing?

13          THE DEFENDANT:   No.

14          THE COURT:   All right.   So under certain  
15 circumstances, you or the government may have the right  
16 to appeal any sentence that's imposed on you.   You  
17 could also appeal -- you may also have the right to  
18 appeal the conviction if you believe that your guilty  
19 plea here today was somehow unlawful or involuntary, or  
20 there was some fundamental defect in the proceedings  
21 today.

22          Do you understand that?

23          THE DEFENDANT:   Yes.

24          THE COURT:   In the cooperation agreement  
25 that you signed, though, with the government, you've

1 agreed that you will not file an appeal or otherwise  
2 challenge your conviction or your sentence, so long as  
3 the Court imposes a term of imprisonment of 78 months  
4 or less. So you've also agreed to waive on appeal that  
5 the statute that you intend to plead guilty to is  
6 unconstitutional and that the conduct that you're going  
7 to admit to does not fall within the scope of that  
8 statute.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Has anyone forced you or  
12 threatened you or made promises to you in order to  
13 induce you to waive your rights to appeal?

14 THE DEFENDANT: No.

15 THE COURT: All right. Questions for me  
16 about your right to appeal and what you're waiving?

17 THE DEFENDANT: No.

18 THE COURT: All right. Now, before we  
19 proceed, are there any questions about anything we've  
20 covered so far about the charge, your rights, or  
21 anything we've talked about so far that you have --  
22 that might not be clear to you?

23 THE DEFENDANT: No questions.

24 THE COURT: All right. Are you ready to  
25 plead to Count 4 of the indictment?

1 THE DEFENDANT: Yes, I am.

2 THE COURT: All right. Ms. Gaffey, any  
3 reason that you think Mr. Polidore should not enter a  
4 plea of guilty here today to this charge?

5 MS. GAFFEY: No, your Honor.

6 THE COURT: Are you aware of any viable  
7 legal defense to the charge in Count 4?

8 MS. GAFFEY: No, your Honor.

9 THE COURT: All right. Mr. Polidore, how do  
10 you plead to Count 4 of the indictment, guilty or not  
11 guilty?

12 THE DEFENDANT: I plead guilty.

13 THE COURT: All right. And are you making  
14 this plea of guilty voluntarily and of your own free  
15 will?

16 THE DEFENDANT: Yes, I am.

17 THE COURT: Anyone threatened you or forced  
18 you or pressured you in any way to plead guilty?

19 THE DEFENDANT: No.

20 THE COURT: Other than the cooperation  
21 agreement, any other promises made to you to induce you  
22 to plead guilty?

23 THE DEFENDANT: No.

24 THE COURT: Okay. And has anyone promised  
25 what the sentence would be if you plead guilty?

1 THE DEFENDANT: No.

2 THE COURT: All right. I'm going to need  
3 you at this point to tell me in your own words what you  
4 did in connection with Count 4 in the indictment.

5 MS. GAFFEY: May we just have one moment,  
6 your Honor?

7 THE COURT: Of course. You can take as much  
8 as you need.

9 (Ms. Gaffey is conferring with the  
10 defendant.)

11 THE COURT: Are you ready to proceed?

12 MS. GAFFEY: Yes, your Honor.

13 THE COURT: All right.

14 THE DEFENDANT: On November 4<sup>th</sup>, I purchased  
15 firearms under false pretense and knowingly, I did this  
16 to sell them.

17 (Ms. Gaffey is conferring with the  
18 defendant.)

19 THE DEFENDANT: Okay. In order --

20 THE COURT: Take your time, take your time.

21 THE DEFENDANT: I'm sorry, I'm nervous. On  
22 November 4<sup>th</sup>, I made a false statement to a firearms  
23 dealer in order to purchase a firearm. I intended to  
24 -- sorry.

25 THE COURT: That's okay.

1           THE DEFENDANT: I intended to deceive the  
2 dealer in order to get -- in order to get the firearm.  
3 This took place in the Northern District of Georgia.

4           THE COURT: Okay. And you knew that the  
5 statement that you made to the dealer was not true, was  
6 false?

7           THE DEFENDANT: Yes.

8           THE COURT: Okay. And it was your intention  
9 to deceive.

10          THE DEFENDANT: Yes.

11          THE COURT: Now, I see you were reading  
12 something. Is that something that was prepared by you  
13 and your lawyer?

14          THE DEFENDANT: Yes.

15          THE COURT: All right. And is there a  
16 reason you needed to read it? Does it help you to  
17 describe the events?

18          THE DEFENDANT: Yes.

19          THE COURT: Okay. And is that accurate,  
20 what was written?

21          THE DEFENDANT: Yes.

22          THE COURT: Okay. Mr. Bagnuola, anything  
23 else in terms of the allocution?

24          MR. BAGNUOLA: Your Honor, I would just like  
25 to clarify that November 4<sup>th</sup> was in 2020 as alleged in

1 the indictment. And as Mr. Polidore correctly noted,  
2 the charge is venued in the Northern District of  
3 Georgia. My understanding is that Mr. Polidore is  
4 prepared today to waive indictment in the Northern  
5 District of Georgia and accept the Court's jurisdiction  
6 here in the Eastern District of New York.

7 MS. GAFFEY: Yes, your Honor, and I'll add  
8 that Count 1 of the indictment, the conspiracy count  
9 that Mr. Polidore is not pleading guilty to, is  
10 properly venued in the Eastern District of New York.  
11 And as this is a negotiated plea to Count 4 --

12 THE COURT: Yeah.

13 MS. GAFFEY: -- we are waiving venue in the  
14 Northern District of Virginia -- excuse me, Georgia.

15 THE COURT: Okay. Let's start with the year  
16 that it occurred. You recited a date. Let's just get  
17 confirmation of the year.

18 THE DEFENDANT: 2020.

19 THE COURT: 2020?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay, very well. And you heard  
22 the discussion about the venue. That is, you're here  
23 in stead of the Northern District of Georgia.

24 Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay. And did you have  
2 sufficient time to speak with Ms. Gaffey about the  
3 venue of this case in terms of pleading guilty here as  
4 opposed to the Northern District of Georgia?

5 THE DEFENDANT: Yes.

6 THE COURT: Did anybody pressure you or  
7 promise you anything to plead guilty here as opposed to  
8 in the Northern District of Georgia?

9 THE DEFENDANT: No.

10 THE COURT: All right. Do you need any more  
11 time to speak with Ms. Gaffey about that?

12 THE DEFENDANT: No.

13 THE COURT: Okay. And it's your decision to  
14 have the plea taken here in the Eastern District of New  
15 York?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. And this decision is  
18 made voluntarily and of your own free will?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay, very well.

21 Anything else on the allocution, Mr.  
22 Bagnuola?

23 MR. BAGNUOLA: No, your Honor, thank you.

24 THE COURT: All right. I would like to hear  
25 the government outline its proof as to Count 4 in the

1 indictment.

2 MR. BAGNUOLA: Yes, your Honor. If the case  
3 had gone to trial, among other things, the government  
4 would have offered ATF forms 4473. Those are federal  
5 records documenting firearms transactions completed by  
6 Mr. Polidore in the course of purchasing six firearms  
7 from licensed dealers in Douglasville, Hiram, and  
8 Kennesaw, Georgia on November 4<sup>th</sup>, 2020, in which he  
9 made statements concerning the intended recipient of  
10 those firearms.

11 We would introduce electronic communications  
12 between Mr. Polidore and his codefendant demonstrating  
13 among other things that the codefendant was the true  
14 intended recipient of the firearms and that the  
15 defendant knew that to be the case. We would offer a  
16 certificate of disposition reflecting his codefendant's  
17 prior felony conviction and as such, his status as a  
18 person prohibited from possessing a firearm, and  
19 testimony from the firearms dealers that the  
20 defendant's statements were material in so far as they  
21 would not have sold him those firearms if they had  
22 known the guns were intended for a convicted felon.

23 THE COURT: Okay, thank you very much.

24 Based upon the information provided to me  
25 here today, I do find that you, Mr. Polidore, are fully



1 competent and capable of entering a plea -- an informed  
2 plea of guilty. I also find that you're acting  
3 voluntarily and that you fully understand the charge,  
4 your rights, and the consequences of your guilty plea.  
5 I also find that there's a factual basis for the plea  
6 of guilty. So I will recommend to the Honorable Joan  
7 Azrack that your plea of guilty to the charge 4 in the  
8 indictment be accepted by her.

9           So the next step for you, Mr. Polidore, is  
10 that you will meet with someone from the Probation  
11 Department to prepare that presentence report that I  
12 mentioned before, and I do urge that you cooperate with  
13 them, as I know you will, obviously with the advise of  
14 your good lawyer, Ms. Gaffey, and you have to be  
15 truthful and forthcoming with them.

16           Okay. The government's position on release  
17 or detention?

18           MR. BAGNUOLA: We would move to continue the  
19 current conditions of release, Judge.

20           THE COURT: Okay. Ms. Gaffey, of course you  
21 agree.

22           MS. GAFFEY: Yes, I do.

23           THE COURT: All right. The same conditions  
24 will continue then. Thank you very much. The next  
25 date before Judge Azrack -- the sentencing date right

1 now is scheduled for January 9<sup>th</sup>, 2024 at 11:00 in her  
2 courtroom, 920.

3 Anything else, Mr. Bagnuola?

4 MR. BAGNUOLA: No, your Honor, thank you.

5 THE COURT: Okay. Ms. Gaffey?

6 MS. GAFFEY: No, your Honor, thank you very  
7 much.

8 THE COURT: Okay, take care, everybody.

9 Mr. Polidore, you take care.

10 THE DEFENDANT: Thank you. You, too.

11 THE COURT: Thank you.

12 \* \* \* \* \*

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18 I certify that the foregoing is a correct  
19 transcript from the electronic sound recording of the  
20 proceedings in the above-entitled matter.  
21

22  
23  
24

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'EmB' followed by a long horizontal stroke.

25 ELIZABETH BARRON

November 2, 2023